

Faulk, Camilla

From: Lora Brown [lora@llobrownlaw.com]
Sent: Friday, May 11, 2007 2:24 PM
To: Faulk, Camilla
Subject: Comment to proposed change to RPC 1.15A

I want to provide my comments in SUPPORT of the proposed rule change to RPC 1.15A published by the Court in April 2007.

No lawyer is forced to keep a client's original estate planning documents. However, many of us feel that doing so is a great service to our clients; I don't intend to stop providing this service to make my work life easier or to save me the cost of the current accounting requirement of RPC 1.15A if the rule is not amended.

Keeping original estate planning documents in my office makes sure they are safe from unhappy beneficiaries or individuals who may destroy an original document (say, if they don't like the terms it contains and would rather see mom's estate pass by intestacy). The burden of proof if you can't find an original will makes it difficult to fulfill a client's intended disposition if an unhappy disinherited beneficiary has access to the original will. And having the original in our possession avoids the additional cost of probating a lost will even in a "happy family."

In my opinion the accounting requirement for client "property" as defined in current RPC 1.15A will force many lawyers – from solo shops to larger firms which hold thousands of original documents – to return these documents to their clients and it will be the clients and their families who are harmed. Or it will require estate planning attorneys to increase their fees to clients to cover the administrative cost of the annual accountings.

In my view this rule needs to be changed and the proposed modification makes sense. Lawyers who choose to keep original documents for their clients should be encouraged (and possibly required, as contained in the new rule) to keep such property safeguarded, segregated and itemized, and also provide an accounting of these items to the client on a timely basis when asked. But to require a written annual accounting for all "property" of clients in our possession is simply unnecessary, burdensome, and in the end will be costly to clients on many levels.

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